

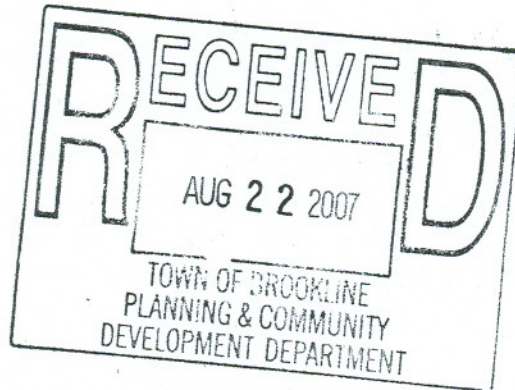


TOWN OF BROOKLINE

Massachusetts

BOARD OF APPEALS

DIANE R. GORDON, Co-Chair
HARRY MILLER, Co-Chair
BAILEY S. SILBERT



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Brookline, MA 02445
617-730-2010
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PATRICK J. WARD, Secretary

**TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 070037**

Petitioners, Russell and Janice Isaia, owners of Unit 1, Gabriele and Andrea Castelli, owners of Unit 2, and Kenneth and Carla Lane, owners of Unit 3, all located at 14 Browne Street, applied to the Building Commissioner requesting permission to reconstruct, insulate and enclose the existing rear porches adjacent to their condominium units and to add new screened-in porches onto the rear of each new addition in accordance with submitted plans. The application was denied and an appeal to this Board was taken from the decision of the Commissioner.

On June 7, 2007, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals. The Board then fixed Thursday, July 19, 2007, at 7:00 P.M., in Hunnerman Hall on the second floor of Town of Brookline Main Library as the time and place for a public hearing on the appeal. Notice of the scheduled hearing was mailed to the petitioner, to their attorney (if any of record), to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others as required by law. Notice of the hearing was published on June 28, 2007 and July 5, 2007 in the Brookline TAB, a newspaper published in Brookline. Copy of said notice is as follows:

LEGAL NOTICE
TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS
NOTICE OF HEARING

Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: RUSSELL R. & JANICE L. ISAIA (UNIT 1) GABRIELE CASTELLI
& ANDREA (UNIT 2) KENNETH D. & CARLA LANE (UNIT 3)

Location of Premises: **14 BROWNE ST BRKL**

Date of Hearing: **07/19/2007**

Time of Hearing: **7:00 p.m.**

Place of Hearing: **Main Library, Hunnerman Hall, 2nd fl.**

A public hearing will be held for a variance and/or a special permit from:

- 1) **5.43; Exceptions to Yard and Setback Regulations; Special Permit Required.**
- 2) **5.60; Side Yard Requirements; Variance Required.**
- 3) **5.61; Projections into Side Yards; Variance Required..**
- 4) **5.62; Fences and Terraces in Side Yards; Variance Required.**
- 5) **8.02.2; Alteration or Extension; Special Permit Required.**

Of the Zoning By-Law to enclose existing rear porches into habitable space (i.e. an addition to the building) and to construct new open screen porches per plans at **14 BROWNE ST BRKL**

Said Premise located in a **M-2.0** district.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-730-2134 or check meeting calendar at:

<http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>

The Town of Brookline does not discriminate on the basis of disability in admission to, or operations of its programs, services, or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the **ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2330; TDD (617) 730-2327**

Diane R. Gordon
Harry Miller
Bailey Silbert

At the time and place specified in the notice a public hearing was held by this Board.

At the time and place specified in the notice a public hearing was held by this Board.

Present were Lawrence E. Kaplan, Chair, Bailey S. Silbert and Murray G. Shocket.

Petitioners were represented by Attorney Roger R. Lipson of 7 Harvard Street, Brookline. Mr. Lipson described 14 Browne Street as a pre-existing, nonconforming three-story dwelling in the midst of a row of similar attached brownstones and containing four condominium units. He noted that the existing porches for the petitioners' units were in the rear of the building facing a large open parking area shared with other neighboring properties. Mr. Lipson said that his clients wished to tear down, reconstruct and enclose the existing porches which would add additional living space to their individual units. The petitioners also propose to build onto the enclosed additions new screened-in porches. Mr. Lipson noted that several of the nearby properties, such as 16 Browne Street and 18 Browne Street, had enclosed their porches in prior years. Mr. Lipson pointed out that 12 Browne Street, in particular, had enclosed their porches and added screened-in porches similar to the petitioners' plan for 14 Browne Street. The only difference between the two properties was that the screened-in porches for 12 Browne Street were on the inside of the enclosures rather than on the outside facing the parking area as was being proposed by the petitioners. Mr. Lipson explained that the new additions would have the same dimensions as the existing porches, 8.6 feet by 14.8 feet, and would be the same height. Mr. Lipson stated that, although the proposed screened-in porches, measuring 8.6 feet by 6.6 feet, did not comply with the side yard setback requirements, the Board of Appeals, under Section 5.43, may waive the requirement by granting a special permit if the petitioners provided a counterbalancing amenity. Mr. Lipson said that the petitioners are proposing to provide new landscaping that would fulfill that requirement although the exact area had not yet been chosen. The petitioners are agreeable to suggestions and will work with the staff of the Planning and Community

Development Department in developing an acceptable landscaping plan. Mr. Lipson noted also that a special permit under Section 8.02.2 may be issued by the Board for the alteration, repair or enlargement of a nonconforming use or structure as long as the nonconformity is not increased unless it is allowed under another section of the Zoning By-Laws such as Section 5.43.

Mr. Lipson then introduced John Adelberg, AIA, a registered architect, of 12 Browne Street, who drafted the petitioners' proposed plan. Mr. Adelberg showed the Board members an enlarged drawing of what the addition and screened-in porches would look like when completed. He stated that the addition's exterior would be finished in red cedar siding and MDO panel. He said that the building's parking spaces would probably be moved back a few feet after the project was completed and landscaping installed. In answer to a question from Board member Bailey S. Silbert, Mr. Adelberg stated that the enclosed porches were to be fully insulated and heated.

The Chair, Lawrence E. Kaplan, then asked if there were any members of the public who wished to speak in support of the petitioners' request. Hearing none, the Chairperson then asked if there were any members of the public who wished to speak in opposition to the petitioners' request. Mr. Robert Gross, of 16 Browne Street, Apt. #3, stated that he hadn't seen the proposed plan but was concerned whether the new addition and screened-in porches would enable persons to look into his third-floor bedroom window. In regard to Mr. Gross's concern, Mr. Adelberg pointed out that the new additions and screened-in porches would present no difference from what now exists with the petitioners' porches. In fact, Mr. Gross's bedroom window, which is at a slight angle facing out towards the rear yard, extends beyond the actual point at which the proposed screened-in porch ends.

The Chairperson then asked for a report and recommendation from the Brookline Planning Board.

Laura Curtis, Staff Planner, of the Brookline Planning and Community Development Department, addressed the Board of Appeals on behalf of the Brookline Planning Board. She stated that the Planning Board has no objection to the petitioners' request to enclose the existing porches and to add new screened-in porches. Ms. Curtis stated that the proposed additions are attractively designed, will not enlarge the existing footprint and are harmonious with the properties in the neighborhood, several of which have added similar additions. Moreover, the new screened-in porches will be moderately sized and the overall plan itself will not have a negative effect on the parking in the rear of the building. She noted that under Section 5.43 Exceptions to Yard and Setback Regulations, the submission of a landscaping plan satisfies the requirements for allowing an exception for a reduction in the side yard setback where there is a counterbalancing amenity. Ms. Curtis stated that the proposed alteration also satisfies the requirements of Section 8.02.2 Alteration or Extension for the issuance of a special permit. Therefore, Ms. Curtis concluded, the Planning Board recommends approval of the proposal in accordance with the plans prepared by John Adelberg, dated 02/19/07, and the site plan prepared by Dennis O'Brien, dated 02/23/07, subject to the following conditions:

- (1) Prior to the issuance of a building permit, a final landscaping plan indicating all counterbalancing amenities shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
- (2) Prior to the issuance of a building permit, final elevations of the addition and decks shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
- (3) Prior to issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals

surveyor; 2) final elevations of the addition and deck, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairperson then asked for a report and recommendation from the Brookline Building Department.

Frank Hitchcock, Senior Building Inspector, of the Brookline Building Department, addressed the Board of Appeals. He stated that, after reviewing the petitioner's plans the Building Department has no objections to the petitioners' request to rebuild and enclose the existing porches and to add new screened-in porches. Mr. Hitchcock described the property as an attached building in a row of similarly styled buildings that are separated by a common party wall. He noted that the only question was the side yard setback but that the Board could waive the requirement under Section 5.43 provided that there was a counterbalancing amenity. He said that under Section 8.02.2, the additions were permitted as nonconforming extensions. Overall, the proposed plans comply with the requirements of the Building Code. He agreed with the Planning Board report and recommendations with regard to the issuance of special permits under the Zoning By-Law sections mentioned.

The Chair declared the public discussion portion of the meeting as having been concluded.

The members of the Board, having discussed the merits of the application and having considered the foregoing testimony, conclude that the petitioners are entitled to the relief requested. The Board finds that the proposed enclosed porches will not change the existing footprint, will be harmonious with the existing structure, will be in keeping with the style and architecture of the buildings in the neighborhood, and will not have any adverse affects on traffic,

buildings in the neighborhood, and will not have any adverse affects on traffic, or public health and safety. The Board further finds that the required side yard setback dimensional requirements for the new screened-in porches may be waived by the Board under Section 5.43 where the proposed setback reduction is counterbalanced by an amenity. In this case, the Board finds that the submission of a landscaping plan for review and approval to the Assistant Director of the Planning and Community Development Department meets the requirements of a counterbalancing amenity. The Board finds that the alteration or enlargement of a nonconforming structure that was nonconforming when initially established may be allowed under Section 8.02(2) where the petitioner meets the requirements for the issuance of a special permit under Section 5.43.

Therefore, the Board makes the following findings pursuant to Section 9.05(1):

1. The specific site is an appropriate location for rebuilding and enclosing the existing porches and adding new screened-in porches.
2. The use as proposed by the petitioners will not adversely affect the neighborhood.
3. The proposed plan does not constitute a nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
5. The proposed plan will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Accordingly, the Board grants special permits pursuant to Section 5.43 and Section 8.02.2 subject to the following conditions as recommended by the Planning Board:


- (1) Prior to the issuance of a building permit, a final landscaping plan indicating all

counterbalancing amenities shall be submitted to the Assistant Director for Regulatory Planning for review and approval.

- (2) Prior to the issuance of a building permit, final elevations of the addition and decks shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
- (3) Prior to issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final elevations of the addition and deck, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

RECEIVED
TOWN OF BROOKLINE
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Unanimous Decision of
the Board of Appeals


Lawrence E., Kaplan, Chair

Date of Filing: August 21, 2007

A True Copy:
ATTEST:



Patrick J. Ward
Board of Appeals